

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4842 OF 2017

ORDER:

This C.R.P. is directed at the instance of defendants against the order dated 7th August, 2017 in I.A.No.551 of 2015 in O.S.No.62 of 2011 on the file of the Senior Civil Judge, Wanaparthy, whereby and whereunder, the learned judge dismissed the petition filed by the defendants seeking permission to amend their written statement.

The respondent/plaintiff filed O.S.No.62 of 2011 for declaration and possession of the suit schedule land. His case is that he is the owner of the plaint schedule lands and has leased out them to one B.Bal Reddy who is the father-in-law of defendants 1, 3 and 4 and grandfather of other defendants 2, 5 to 9 and 10. The said Bal Reddy died about 15 years prior to the suit and after his death, the defendants 1 to 8 and one B. Janardhan Reddy used to cultivate the lands and pay rent in the form of grains to the plaintiff. However, since past ten years, they failed to pay grains and refused to vacate the lands. Hence, the suit.

The defendants 1 to 4 and 7 to 9 filed their written statement denying the plaint averments. Their case, in brief, is that they are enjoying the suit land being the successor-in-interest of the suit land and the defendants are owners and possessors by efflux of time and the plaintiff has no right in the suit land. They have not given the details as to how they became owners of the suit land.

Be that it may, defendants 12 to 15 filed separate written statement. They too denied the plaintiff's case. Their case is that the suit is barred by limitation; the defendants are owners and possessors of the suit land by efflux of time; the plaintiff himself, long back, sold away the land in S.No.135 to an extent of Ac.1.00 cents to one Golla Andela Chinnaiah under the sale deed dated 18-6-1972 and in turn, the purchaser alienated the said land to one Panduga Sudershan Reddy under private sale deed dated 23-9-1973; the plaintiff in need of money sold away the land bearing Survey No.95, 134 and 138 under private sale deed to the said Sudershan Reddy dated 21-6-1973; the purchaser i.e., the said Sudershan Reddy sold the above land to one Bal Reddy under private sale deed dated 2-1-1976 and those lands were recorded in the name of Bal Reddy under Section 5-A of R.O.R.Act and after the death of the said B. Bal Reddy, the said land devolved upon the successors who are defendants 1 to 10 and 12 to 15 and they have been enjoying the suit properties; defendants 1 to 10 have partitioned the suit properties along with the other properties and in the said partition, different phases of suit land fell to the share of different co-paceners as detailed in their written statement; plaintiff has nothing to do with the said land.

It appears pending trial, the defendants filed I.A.No.595 of 2014 seeking permission to file additional documents i.e., private sale deeds and R.O.R. proceedings and the said petition was allowed. The plaintiff carried the C.R.P.No.1384 of 2014 to this court against

the said order and this court disposed of the said C.R.P. holding that there is no cause of action for filing the C.R.P.

Subsequently, the defendants filed I.A.No.551 of 2015 seeking permission to amend the written statement. In the affidavit filed in support of the said petition, they stated that the defendants 1 to 4 and 7 to 9 in their earlier written statement could not vividly explain as to how they got title and ownership over the suit schedule properties and therefore, they may be permitted to amend the written statement and narrate the manner in which they got the said properties. The amendment would neither change the cause of action nor nature of the suit and it would not cause any prejudice to the plaintiff. It was an endeavor to explain how the defendants got the suit properties which was essential for proper adjudication of the suit.

The respondent/plaintiff filed counter and opposed the petition.

The trial court in the impugned order dated 7-8-2017, dismissed the petition mainly on the observation that no application for amendment shall be allowed after the trial was commenced unless the court came to a conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial and in the instant case, the defendants, till the completion of evidence of the plaintiff's side, did not file such amendment petition. Thus, the trial court dismissed the petition mainly on the observation that it was a belated one. Hence, the present C.R.P.

Heard the learned counsel for the petitioners.

The submission of the learned counsel for the petitioners is that the suit lands for which the declaration and possession is claimed, in fact, were sold away by the plaintiff under different private sale deeds and the ancestors of the defendants have acquired title in respect of the plaint schedule lands and therefore, the plaintiff has no right to file the suit. Though the defendants 1 to 4 and 7 to 9 in the written statement briefly narrated that the defendants are owners and possessors of the suit land by efflux of time, however, unfortunately, their counsel did not elaborately explain about the sale deeds effected by the plaintiff in favour of the vendor of the ancestors of the defendants and therefore, there was no clarity as to how the defendants acquired title in respect of the suit schedule land.

Learned counsel would submit that the defendants are illiterates and they have given all their documents at the time of filing the written statement but their counsel unfortunately could not furnish details in the written statement narrating as to how the defendants got the title of the suit land. He further submitted, however in the written statement of defendants 12 to 15, the flow of title of the defendants from the plaintiff was clearly mentioned and the different private sale deeds were also mentioned therein which can be referred to. Thus, he submitted that the trial court was not right in dismissing the petition only on the ground that it was a belated one. He relied upon a decision reported in

RAM NIRANJAN KAJARIA v. SHEO PRAKASH KAJARIA AND OTHERS

(¹). He thus, prayed to allow the C.R.P.

Per contra, the learned counsel for the respondent vehemently opposed the petition and submitted that the defendants in the original written statement did not mention about the alleged private sale deeds and mutation proceedings. For the first time, they wanted to introduce all those documents in the amended written statement, at a belated stage, when the suit was coming on for their evidence. Hence, the trial court rightly rejected the petition and there are no merits in this C.R.P.

The point for determination is whether there are any merits in the C.R.P. to allow?

As can be seen from the two sets of the written statements filed by the defendants 1 to 4 and 7 to 9 on one hand and written statement filed by defendants 12 to 15 on the other; the common feature in their written statements is that while denying the plaintiff's case and his right to file the suit, their claim is that the defendants are owners of the suit land. However, defendants 1 to 4 and 7 to 9 in their written statement have not vividly explained as to how they acquired title over the suit lands. However, defendants 12 to 15 in their written statement clearly mentioned about the different private sale deeds said to be executed by the plaintiff in favour of P Sudersan Reddy and also about the said Sudersan Reddy executing sale deed in favour of B.Balreddy and also about the mutations taken

¹ 2016 (1) ALD 79 (SC)

place under R.O.R. Act. Of course, this written statement was filed by defendants 12 to 15 subsequently in the year 2015. The important aspect is that in the written statement, they have clearly mentioned about the flow of title to the defendants. Be that it may, now the submission of defendants 1 to 4 and 7 to 9 is that in their original written statement, they have not clearly mentioned about the flow of title and therefore, they may be permitted to amend the written statement to explain the said flow of title in their favour.

In *REVAJEETU BUILDERS AND DEVELOPERS v. NARAYANASWAMY*⁽²⁾, the apex court referred its earlier decision at para 21 wherein certain principles on amendment have been narrated which are thus:

- (1) *“whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) *whether the application for amendment is bona fide or mala fide;*
- (3) *the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) *refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) *whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

² (2009) 10 SCC 84

(6) *as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."*

Applying the above principles to the instant case, it can be said that in the present case, amendment satisfies almost all the principles mentioned above.

It should be mentioned, the amendment sought for will not change the nature of the suit nor cause of action and it will also not cause any prejudice to the plaintiff. The other set of the defendants have already mentioned about the flow of the title and the remaining set of defendants want to mention the same by virtue of the proposed amendment. Therefore, the proposed amendment, in my view, can be allowed.

It is also imperative to mention that earlier, the trial court allowed I.A.No.595 of 2014 permitting the defendants to produce the documents and C.R.P. carried by the plaintiff was dismissed by this court. Now, the gist of those documents is sought to be mentioned in the proposed amended written statement.

Considering all these aspects, I am of the view that the trial court, in the interest of justice ought to have allowed the amendment petition instead of dismissing the same on the ground that it is a belated one. The court must keep in mind that while doing substantial justice to the parties, the procedural obstacles should not

intervene. The delay, if any, can be condoned by way of awarding costs.

In the result, this C.R.P. is allowed setting aside the impugned order. Consequently, I.A.No.551 of 2015 is allowed permitting the defendants 1 to 4 and 7 to 9 to amend their written statement as prayed for on the condition of their depositing costs of Rs.1500/- (Rupees fifteen hundred only) with the Mandal Legal Services Authority, Wanaparathi within one week from the date of receipt of a copy of this order. The trial court shall endeavor to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



JUSTICE U.DURGA PRASAD RAO

Dated 18th December, 2017.

Dvs

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



CIVIL REVISION PETITION No.4842 OF 2017

Dated 18th December, 2017.

Dvs